

AN ORDINANCE 2006-08-17-0912

AUTHORIZING THE CITY MANAGER TO ENTER INTO A TEN-YEAR TAX PHASE-IN AGREEMENT WITH VISTANA L.T.D. TO EXEMPT 100% OF AD VALOREM TAXES ON APPROXIMATELY \$38 MILLION IN REAL PROPERTY IMPROVEMENTS.

* * * * *

WHEREAS, Vistana L.T.D. ("Vistana"), a Texas limited company, is prepared to make an investment of \$38 million in real property improvements for the purpose of constructing a mixed-use, multi-family, market-rate rental housing development (the "Project") in a targeted area of the City on the western perimeter of the Central Business District in City Council District 1; and

WHEREAS, the Project will consist of a fourteen story, five hundred square foot complex comprised of 240 rental apartments, thirty thousand square feet of retail space and four floors of above ground parking that will contain 450 total parking spaces, with 170 of those spaces available for general public use; and

WHEREAS, under the Joint City/County Tax Phase-In Guidelines, the Project is eligible for a 100% abatement of ad valorem taxes for a term of up to ten (10) years as a Central City mixed-use, multi-family housing project which incentive the developer of the Project has requested; and

WHEREAS, the Project will be the first of its kind on the west side of downtown San Antonio and will complement other projects in the area becoming a catalyst for further development in the western sector of downtown; and

WHEREAS, Vistana has indicated that the Project would not be feasible without the requested City incentive; and

WHEREAS, the City Council finds that the proposed Project furthers the objectives of the Economic Development Department and the City of San Antonio in promoting the development of Central City mixed-use, multi-family housing; and

WHEREAS, the City Council also finds that authorizing and approving a Tax Phase-In Agreement with Vistana to abate 100% of ad valorem taxes on \$38 million of real property improvements is a reasonable incentive to help induce Vistana to undertake the Project; and

WHEREAS, the City Council also finds that approving a Tax Phase-In Agreement with Vistana is in the best interest of the City and will induce the desired economic development in the area to the benefit of the City and its citizens; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The terms and conditions of a Tax Phase-In Agreement with Vistana L.T.D. exempting one hundred percent (100%) of ad valorem taxes on \$38 million in real property improvements for a term of ten (10) years, are hereby approved.

SECTION 2. The City Manager or her designee is authorized to execute a Tax Phase-In Agreement with Vistana L.T.D. in accordance with the terms and conditions of this ordinance. A copy of the Agreement, in substantially final form, is attached hereto and incorporated herein as Exhibit "A." The final Agreement shall be filed with this ordinance upon execution.

SECTION 3. This ordinance shall be effective on and after the tenth day after passage.

PASSED AND APPROVED this 17th day of AUGUST 2006.



M A Y O R

PHIL HARDBERGER

ATTEST:


City Clerk

APPROVED AS TO FORM: _____


for City Attorney

AN ORDINANCE 2006-12-14-1424

APPROVING AND AUTHORIZING AN ECONOMIC DEVELOPMENT
PROGRAM LOAN IN THE AMOUNT OF \$1.8 MILLION TO VISTANA L.T.D.
FOR USE IN SUPPORTING THE VISTANA PROJECT.

* * * * *

WHEREAS, Vistana L.T.D. ("Developer"), a Texas limited company, is investing \$38 million in real property improvements for the purpose of constructing a mixed-use, multi-family, market-rate rental housing development (the "Project") in a targeted area of the City on the western perimeter of the Central Business District in City Council District 1; and

WHEREAS, the Project will consist of a fourteen story, five hundred square foot complex comprised of 240 rental apartments, thirty thousand square feet of retail space and four floors of above ground parking that will contain 450 total parking spaces, with 170 of those spaces available for general public use; and

WHEREAS, the Project will be the first of its kind on the west side of downtown San Antonio and will complement other projects in the area becoming a catalyst for further development in the western sector of downtown; and

WHEREAS, the City has previously granted a tax abatement agreement for the Project and the Developer has indicated that the Project would not be feasible without the requested City incentive; and

WHEREAS, the City Council finds that the proposed Project furthers the objectives of the Economic Development Department and the City of San Antonio in promoting the development of Central City mixed-use, multi-family housing; and

WHEREAS, the City Council also finds that authorizing and approving an Economic Development Program Loan is a reasonable incentive to help induce Vistana to undertake the Project; and

WHEREAS, the City Council also finds that approving an Economic Development Program Loan with Developer will promote the local economic development and stimulate business and commercial activity in the municipality; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The terms and conditions of an Economic Development Program Loan Agreement with Vistana L.T.D. in an amount not to exceed \$1.8 million are approved.

SECTION 2. The City Manager or her designee is authorized to execute an Economic Development Program Loan Agreement with Vistana L.T.D. in accordance with the terms and conditions of this ordinance. A copy of the Agreement, in substantially final form, is attached

hereto and incorporated herein as Exhibit "A." The final Agreement shall be filed with this ordinance upon execution.

SECTION 3. Funds payable to Developer are contingent upon annual appropriations approved by City Council.

SECTION 4. This ordinance shall be effective on and after the tenth day after passage.

PASSED AND APPROVED this 14th day of DECEMBER 2006.


M A Y O R

PHIL HARDBERGER

ATTEST:


City Clerk

APPROVED AS TO FORM: _____


for City Attorney

AN ORDINANCE 2007-05-17-0565

APPROVING THE EXECUTION OF AN INTERCREDITOR AGREEMENT WITH WESTERN-SOUTHERN LIFE ASSURANCE COMPANY RESTATING THE CITY'S SECOND PRIORITY SECURITY INTEREST IN VISTANA LTD REAL PROPERTY.

* * * * *

WHEREAS, the City approved an Economic Development Program Loan (the "Loan") to Vistana L.T.D. (the "Borrower") on December 14, 2006 to assist in the construction of a mixed-use, multi-family, market-rate rental housing development (the "Project") in a targeted area of the City on the western perimeter of the Central Business District in City Council District 1, and

WHEREAS, in accordance with the terms of the Loan, the City has a subordinate security interest on the Project in the event of default by the Borrower; and

WHEREAS, the primary financier of the Project, Western-Southern Life Assurance Company, has requested that the City enter into an Intercreditor Agreement restating the City's second priority status and has declined to make any disbursements of its loan to the Borrower until such time as the Intercreditor Agreement is executed; and

WHEREAS, the City has agreed to execute the Intercreditor Agreement which creates no further obligations to the City nor endangers its current status as a second priority lender; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

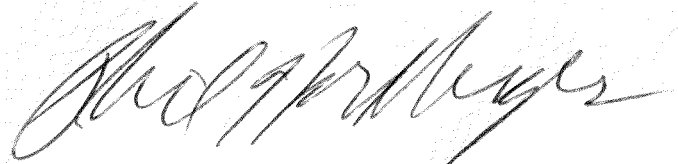
SECTION 1. The terms and conditions of an Intercreditor Agreement with Western-Southern Life Assurance Company are approved.

SECTION 2. The City Manager, or her designee, is authorized to execute an Intercreditor Agreement with Western-Southern Life Assurance Company. A copy of the Agreement, in substantially final form, is attached hereto and incorporated

herein as Exhibit "A." The final Agreement shall be filed with this ordinance upon execution.

SECTION 3. This Ordinance shall become effective on and after the tenth (10th) day after passage hereof.

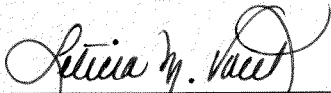
PASSED AND APPROVED this 17TH day of MAY 2007.



M A Y O R

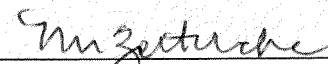
PHIL HARDBERGER

ATTEST:



City Clerk

APPROVED AS TO FORM:



for City Attorney

INTERCREDITOR AGREEMENT

THIS INTERCREDITOR AGREEMENT (this "Agreement") is entered into as of _____, 2007 between WESTERN-SOUTHERN LIFE ASSURANCE COMPANY, an Ohio corporation ("Senior Lender") and THE CITY OF SAN ANTONIO, a municipal corporation of the State of Texas ("Junior Lender").

Recitals

1. Senior Lender has agreed to provide construction and permanent mortgage financing to VISTANA, LTD., a Texas limited partnership ("Debtor"), pursuant to the Senior Lender Documents. The Senior Lender Claims are secured by a security interest in the Collateral.
2. Junior Lender has agreed to provide an economic development loan to Debtor, pursuant to the Junior Lender Financing Documents. The Junior Lender Claims are secured by a security interest in the Collateral.
3. Senior Lender and Junior Lender wish to enter into this Agreement to clarify their respective rights and priorities.

Definitions

Terms used herein that are defined in the UCC have the meanings defined for those terms in the UCC unless otherwise expressly defined herein. As used herein, the following terms shall have the meanings respectively set forth after each:

"Claims" means the Senior Lender Claims and the Junior Lender Claims.

"Collateral" means the real estate located in the City of San Antonio, Bexar County, Texas, as more fully described on Exhibit A attached hereto (the "Real Estate"), and known as the Vistana Apartments, as well as all personal property of Debtor arising out of or related to the Real Estate, including without limitation its accounts, general intangibles, documents, chattel paper, instruments, money, deposit accounts, securities, machinery, equipment, furnishings, fixtures, inventory, and all products and proceeds of any thereof.

"Creditors" means Senior Lender and Junior Lender.

"Default Event" means the occurrence and continuation of a monetary event of default under the Senior Lender Financing Documents.

"Default Notice" means a written notice from or on behalf of Senior Lender of the existence of a Default Event.

"Enforcement Action" means, with respect to Junior Lender and with respect to any Junior Lender Claims or any item of Collateral in which Junior Lender has or claims a security interest, lien, or right of offset, any action, whether judicial or nonjudicial, to

repossess, enforce, collect, offset, recoup, sell, dispose of, foreclose upon such Claim or Collateral. The filing by Junior Lender, or the joining by Junior Lender in the filing of, an involuntary bankruptcy or insolvency proceeding against Debtor, is an Enforcement Action.

"Financing Documents" means the Senior Lender Financing Documents and the Junior Lender Financing Documents.

"Junior Lender Claims" means all present and future claims of Junior Lender against Debtor for the payment of money, including all claims for principal and interest (including interest accruing after the commencement of a bankruptcy proceeding by or against Debtor), or for reimbursement in connection with amounts paid under letters of credit, or for reimbursement of fees, costs or expenses, or otherwise, whether fixed or contingent, matured or unmatured, liquidated or unliquidated, and whether arising under contract, in tort or otherwise.

"Junior Lender Financing Documents" means all present and future loan agreements, notes, reimbursement agreements, security documents or other documents or agreements in any way evidencing or documenting the Junior Lender Claims, as the same may from time to time be amended, modified, renewed, extended or restated.

"Senior Lender Claims" means all present and future claims of Senior Lender against Debtor for the payment of money, including all claims for principal and interest (including interest accruing after the commencement of a bankruptcy proceeding by or against Debtor), or for reimbursement in connection with amounts paid under letters of credit, or for reimbursement of fees, costs or expenses, or otherwise, whether fixed or contingent, matured or unmatured, liquidated or unliquidated, and whether arising under contract, in tort or otherwise.

"Senior Lender Financing Documents" means all present and future loan agreements, notes, reimbursement agreements, security documents or other documents or agreements in any way evidencing or documenting the Senior Lender Claims, as the same may from time to time be amended, modified, renewed, extended or restated.

"Standstill Period" means, with respect to any Default Event, the period from the date of receipt by Junior Lender of a Default Notice from Senior Lender until the first to occur of: (a) the date on which the Senior Lender Claims are paid or otherwise satisfied in full; and (b) the date on which Senior Lender shall have waived or acknowledged the cure of the subject Default Event.

"Takeout Lender" means a lender who has agreed to provide financing to Borrower in the future that will pay the Senior Lender Claims in full, either through a refinancing of the Senior Lender Claims or through an assignment of the Senior Lender Claims.

"Takeout Lender Claims" means all present and future claims of any Takeout Lender against Debtor for the payment of money, including all claims for principal and interest (including interest accruing after the commencement of a bankruptcy proceeding by or against Debtor), or for reimbursement in connection with amounts paid under letters of

credit, or for reimbursement of fees, costs or expenses, or otherwise, whether fixed or contingent, matured or unmatured, liquidated or unliquidated, and whether arising under contract, in tort or otherwise.

"UCC" means the Ohio Uniform Commercial Code, as in effect from time to time.

Agreement

1. Security Interest Priorities. Notwithstanding (a) the date, manner or order of perfection of the security interests and liens granted in favor of Creditors, (b) the provisions of the UCC or any other applicable law or decisions, (c) the provisions of any contract or Financing Document in effect between either Creditor, on the one hand, and Debtor or any affiliate thereof, on the other, and (d) whether either Creditor or any agent or bailee thereof holds possession of any part or all of the Collateral, the following, as among Creditors, shall be the relative priority of the perfected security interests and liens of Creditors in the Collateral:

- 1.1 Senior Lender shall have a first priority security interest in the Collateral to the extent of the Senior Lender Claims.
- 1.2 Junior Lender shall have a second priority security interest in the Collateral to the extent of the Junior Lender Claims.

The priorities set forth herein are solely for the purpose of establishing the relative rights of the Creditors and there are no other persons or entities who are intended to be benefited in any way by this Agreement.

2. Distribution of Proceeds of Collateral. Any and all realizations upon the Collateral by either of the Creditors shall be distributed in accordance with the following procedure:
 - 2.1 All realizations upon the Collateral shall be applied first to the Senior Lender Claims.
 - 2.2 After the Standstill Period has expired, any remaining realizations upon the Collateral shall be paid to the Junior Lender Claims until they are paid or otherwise satisfied in full.
 - 2.3 After all of the Claims have been paid or otherwise satisfied in full, the balance of realizations upon the Collateral, if any, shall be paid to Debtor or as otherwise required by applicable law.
3. Limitation on Exercise of Remedies by Junior Lender. Anything contained in the Junior Lender Financing Documents to the contrary notwithstanding, if Junior Lender shall have received a Default Notice, then, during the Standstill Period, Junior Lender shall be prohibited from taking any Enforcement Action until the Standstill Period shall cease to be in effect. Upon termination of the Standstill Period, Junior Lender may, at its sole election and subject to the provisions hereof, exercise any and all remedies (including the acceleration of the maturity of its Claims) available to it under the Junior Lender

Financing Documents or applicable law. Should Junior Lender be required to make an appearance in any Enforcement Action brought by Senior Lender, upon the voluntary or involuntary dismissal by Senior Lender of any such Enforcement Action, Junior Lender shall also file a voluntary dismissal of its claims.

4. Default under Junior Lender Financing Documents. Should there occur an event of default under the Junior Lender Financing Documents, Junior Lender shall immediately provide written notice of such default to Senior Lender, describing the nature thereof and the extent of any cure period that has been granted to Debtor.
5. Waiver of Right to Require Marshaling. Each Creditor hereby expressly waives any right that it otherwise might have to require the other Creditor to marshal assets or to resort to Collateral in any particular order or manner, whether provided for by common law or statute.
6. Exercise of Remedies. Each Creditor may exercise its good faith discretion with respect to exercising or refraining from exercising any of its rights and remedies under its Financing Documents. Junior Lender agrees that Senior Lender shall not incur any liability to Junior Lender for taking or refraining from taking any action with respect to the Collateral so long as Senior Lender exercises its discretion in good faith. Senior Lender agrees that Junior Lender shall not incur any liability to Senior Lender for taking or refraining from taking any action with respect to the Collateral so long as Junior Lender exercises its discretion in good faith.
7. Takeout Financing. Junior Lender agrees that the rights and benefits of the Senior Lender under this Agreement shall be extended to any Takeout Lender, and Junior Lender expressly consents to the full subordination of the Junior Lender Claims, including without limitation the priority of the Junior Lender security interests, to the Takeout Lender Claims, if any.
8. UCC Notices. In the event that any Creditor shall be required by the UCC or any other applicable law to give any notice to the other Creditor, such notice shall be given in accordance with Section 19 hereof and five days notice shall be conclusively deemed to be commercially reasonable.
9. Independent Credit Investigations. No Creditor nor any of their respective directors, officers, agents, or employees shall be responsible to any other Creditor or to any other person or entity for Debtor's solvency; creditworthiness, financial condition or ability to repay any of the Claims or for the accuracy of any recitals, statements, representations or warranties of Debtor, oral or written, or for the validity, sufficiency, enforceability or perfection of the Claims or the Financing Documents, or any security interests or liens granted by Debtor to any Creditor in connection therewith. Each Creditor has entered into its respective financing agreements with Debtor based upon its own independent investigation, and makes no warranty or representation to the other Creditor, nor does it rely upon any representation of the other Creditor with respect to matters identified or referred to in this paragraph. Neither Creditor shall have any responsibility to the other Creditor for monitoring or assuring compliance by Debtor with any of Debtor's

Collateral by the Senior Lender holding the senior security interest therein free and clear of the Junior Lender's junior security interest.

16. Construction. Unless the context of this Agreement clearly requires otherwise, references to the plural including the singular, the singular includes the plural, the part includes the whole, "including" is not limiting, and "or" has the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement as a whole and not to any particular provision of this Agreement. Section references are to this Agreement unless otherwise specified.
17. Modifications in Writing. No amendment, modification, supplement, termination, consent, or waiver of or to any provision of this Agreement, nor any consent to any departure therefrom shall in any event be effective unless the same shall be in writing and signed by or on behalf of the Creditors. Any waiver of any provision of this Agreement, or any consent to any departure from the terms of any provisions of this Agreement, shall be effective only in the specific instance and for the specific purpose for which given.
18. Waivers; Failure or Delay. No failure or delay on the part of either Creditor in the exercise of any power, right, remedy, or privilege under this Agreement shall impair such power, right, remedy, or privilege or shall operate as a waiver thereof; nor shall any single or partial exercise of any such power, right, or privilege preclude any other or further exercise of any other power, right, or privilege. The waiver of any such right, power, remedy, or privilege with respect to particular facts and circumstances shall not be deemed to be a waiver with respect to other facts and circumstances.
19. Notices and Communications. All notices, demands, instructions, and other communications required or permitted to be given to or made upon any party hereto shall be in writing and shall be delivered or sent by first-class mail, postage prepaid, and shall be deemed to be given for purposes of this Agreement on the day that such writing is properly dispatched in accordance with the terms hereof to the intended recipient. Unless otherwise specified in a notice mailed or delivered in accordance with the foregoing provisions of this Section, notices, demands, instructions and other communications in writing shall be given to or made upon the respective parties hereto at their respective addresses indicated on the signature pages hereof.
20. Headings. Section headings used in this Agreement are for convenience of reference only and shall not constitute a part of this Agreement for any purpose or affect the construction of this Agreement.
21. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same agreement. Any party so executing this Agreement by facsimile transmission shall promptly deliver a manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by facsimile transmission.

22. Severability of Provisions. Any provision of this Agreement which is illegal, invalid, prohibited, or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such illegality, invalidity, prohibition, or unenforceability without invalidating or impairing the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.
23. Complete Agreement. This Agreement is intended by the parties as a final expression of their agreement and is intended as a complete statement of the terms and conditions of their agreement. This Agreement shall not be modified except in a writing signed by the party to be charged, and may not be modified by conduct or oral agreements.
24. Successors and Assigns. This Agreement is binding upon and inures to the benefit of the successors and assigns of each Creditor. Each Creditor agrees to maintain a copy of this Agreement together with its copies of the Financing Documents relating to its Claims. Each Creditor expressly reserves its right to transfer or assign its Claims, in whole or in part, together with its rights hereunder, provided that, prior to transferring or assigning any interest in its Claims to any person or entity, each Creditor shall disclose to such person or entity the existence and contents of this Agreement, shall provide to such person or entity a complete and legible copy hereof, and shall advise such person or entity that such Creditor's security interest in the Collateral is subject to the terms hereof.
25. Attorneys' Fees and Disbursements. In the event of any dispute concerning the meaning or interpretation of this Agreement that results in litigation, or in the event of any litigation by a party to enforce the provisions hereof, the prevailing party shall be entitled to recover from the non-prevailing party its reasonable attorneys' fees and disbursements, and any actual court cost incurred.
26. Release of Collateral. Creditors agree that either Creditor may release or refrain from enforcing its security interest in any Collateral, or permit the use or consumption of such Collateral by Debtor free of such Creditor's security interest, without incurring any liability to the other Creditor.
27. Governing Law. This Agreement has been delivered and accepted at and will be deemed to have been made at Cincinnati, Ohio and will be interpreted and the rights and liabilities of the parties hereto determined in accordance with the laws of the State of Ohio, without regard to conflicts of law principles.

[Signature page follows]

IN WITNESS WHEREOF, Creditors have entered into this Agreement as of the date first set forth above, intending to be legally bound hereby.

**WESTERN-SOUTHERN LIFE
ASSURANCE COMPANY,**
An Ohio corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Address:

400 Broadway
Cincinnati, Ohio 45202
Attn: General Counsel

Attest:

Leticia Vacek
City Clerk

CITY OF SAN ANTONIO,
A Texas municipal corporation

By: _____
Sheryl L. Sculley
City Manager

Approved as to form:

Michael D. Bernard
City Attorney

Address:

Exhibit A

Legal Description